

1 Pursuant to the Court's Order of December 28, 2007 and Local Rule 16-9(a), Plaintiff,
2 Jelly Belly Candy Company ("Jelly Belly"), and Defendants, Aran Candy Ltd. and
3 Sweetstall.Com, Ltd. (collectively "Defendants"), hereby jointly submit this Case
4 Management Statement and Proposed Order and request the Court to adopt it as its Case
5 Management Order in this case.

6 Jelly Belly and Aran have attempted, unsuccessfully, to resolve this dispute over the
7 course of the last several years. Since the filing of this lawsuit, the parties have continued
8 their efforts to attempt to resolve this dispute. On December 13, 2007, Defendants stated in
9 writing that they agreed to certain basic settlement terms proposed by Jelly Belly. On January
10 7, 2008, Jelly Belly sent Defendants a draft agreement, and Defendants responded on January
11 17, 2008. While the parties agree in principle on some settlement terms, they have been
12 unable to reach agreement on other terms. Pursuant to Local Rule 7-2, the parties therefore
13 respectfully request that the Court refer the case to a Magistrate Judge for a settlement
14 conference.

15 In addition, as set forth below in more detail, the parties disagree as to whether this
16 Court should now set a schedule for the conduct of this litigation. Jelly Belly believes that,
17 especially because there is no settlement in place and in order to prevent unnecessary delay in
18 the event that a resolution is not reached, the Court should now impose a schedule as proposed
19 below. Defendants, on the other hand, believe that it is premature to set any schedule prior to
20 a settlement conference.

21 **1. Jurisdiction and Service**

22 This Court has jurisdiction over the subject matter of the federal claims pursuant to
23 28 U.S.C. §§1331 and 1338 and 15 U.S.C. §1121. This Court has jurisdiction over the
24 remaining claims under 28 U.S.C. §1367(a). Venue is proper in this Court pursuant to 28
25 U.S.C. §1391. Defendants do not dispute this basis for jurisdiction. No issues exist with
26 regard to personal jurisdiction or venue as Defendants have waived service of summons and
27 there are no other named parties to be served.

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1 they develop or become known to the parties through the course of discovery and
2 investigation.

3 1. Whether Defendants' acts constitute trademark infringement under Section
4 32(1) of the Lanham Act, 15 U.S.C. § 1114.

5 2. Whether Defendants' acts constitute false designations or origin, unfair
6 competition, and trade dress infringement under Section 43(a) of the Lanham Act, 15 U.S.C.
7 § 1125(a).

8 3. Whether Defendants' acts constitute trademark and trade dress dilution under
9 Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

10 4. Whether Defendants' acts constitute trademark and trade dress infringement
11 under California Business & Professions Code §14335 and California common law.

12 5. Whether Defendants' acts constitute unfair competition under California
13 Business & Professions Code §17200 and California common law.

14 6. Whether Defendants' acts constitute false or misleading statements under
15 California Business & Professions Code §17500 and California common law.

16 7. Whether Defendants' acts constitute trademark dilution under California
17 Business & Professions Code §14330 and California common law.

18 **4. Motions**

19 There are no prior or pending motions. The parties are evaluating what, if any,
20 motions may be filed in the future.

21 **5. Amendment of Pleadings**

22 Pursuant to the Court's December 28, 2007 Order, the Defendants have not yet
23 answered the complaint. The Defendants' answer is currently due on April 9, 2008. As
24 Defendants have not yet answered the complaint, the parties do not yet know whether the
25 pleadings will need to be amended.

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1 **6. Evidence Preservation**

2 Counsel for all parties has given their respective clients document retention
3 instructions for all categories of potentially relevant documents, including electronically-
4 stored information.

5 **7. Disclosures**

6 The parties propose that initial disclosures be made 30 days after the settlement
7 conference.

8 **8. Discovery**

9 To date, the parties have not taken any discovery. Jelly Belly proposes the following
10 discovery plan:

11 a. Jelly Belly expects the parties will agree to entry of a protective order
12 governing documents and information to be disclosed in the course of this litigation. Jelly
13 Belly expects to serve on Defendants interrogatories, requests for documents and deposition
14 notices.

15 b. Jelly Belly does not anticipate proposing any changes with regard to the
16 timing, form, or requirement for disclosures under Fed. R. Civ. P. 26(a).

17 c. Jelly Belly submits that discovery should be conducted in accordance with the
18 limitations set forth in the Federal Rules of Civil Procedure.

19 d. Jelly Belly's proposed schedule for completion of discovery is set forth below
20 in Paragraph. 17.

21 Because the parties have agreed in principle to some settlement terms, Defendants
22 believe it is premature to address the scope of anticipated discovery, limitations or
23 modifications to the discovery rules, or to set a proposed discovery plan prior to a settlement
24 conference.

25 **9. Class Actions**

26 The action is not a class action.

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1 **10. Related Cases**

2 There are two related cases currently pending: Jelly Belly has filed a complaint
3 against Aran in the Federal Court of Canada, on grounds similar to those in the instant case.
4 That case is captioned *Jelly Belly Candy Company v. Aran Candy Ltd.*, Federal Court File
5 No. T-1875-07. Jelly Belly has also filed a complaint on similar grounds against Aran in the
6 United Kingdom, captioned *Jelly Belly Candy Company v. Aran Candy Ltd.*, Particulars of
7 Claim No. HC07C03031. Activity in both cases has been stayed until a settlement
8 conference is held in this case.

9 **11. Relief**

10 Jelly Belly seeks declaratory relief, injunctive relief, an accounting by Defendants,
11 damages, treble damages, exemplary damages, costs, attorney fees, expenses, and an order for
12 the destruction of infringing articles. Because no discovery has yet been taken in this case,
13 Jelly Belly is not able to calculate the amount of its damages at the present time.

14 Because the parties have agreed in principle to some settlement terms, Defendants
15 believe that it is premature to address the damages demands set forth in Jelly Belly's
16 complaint.

17 **12. Settlement and ADR**

18 The parties have unsuccessfully attempted to resolve their dispute over the last several
19 years. The parties have filed a Notice of Need for ADR Phone Conference. The process that
20 the parties jointly request is that the case be assigned to a judge or magistrate judge for a
21 settlement conference at the earliest opportunity.

22 **13. Consent to Magistrate Judge For All Purposes**

23 Jelly Belly does not consent to a magistrate judge for all purposes. Defendants
24 consent to a magistrate judge for all purposes.

25 **14. Other References**

26 As discussed above, the parties stipulate to a settlement conference. Jelly Belly
27 believes that a case schedule should now be imposed and that the case should not be stayed
28 pending any settlement discussions. Defendants believe that the case should be stayed

1 pending the settlement conference. Defendants also believe that if the Court were to decide
 2 not to refer the case to a settlement conference, the case would be suitable for reference to
 3 voluntary mediation. In that event, Defendants believe the case should be stayed pending the
 4 mediation.

5 **15. Narrowing of Issues**

6 At this time, the parties are not aware of any issues that can be narrowed.

7 **16. Expedited Schedule**

8 The parties do not believe this is the type of case that can be handled on an expedited
 9 basis with streamlined procedures.

10 **17. Scheduling**

11 Jelly Belly proposes that the following dates be imposed. Jelly Belly believes that the
 12 proposed schedule will provide the parties with ample time to pursue a settlement conference,
 13 while, at the same time, having in place deadlines to insure that the case progresses in the
 14 event the parties are unable to reach a resolution.

15	Fact Discovery Cutoff:	12/10/08
16	Exchange of Expert Witness Reports on	02/01/09
17	Issues on which the Disclosing Party	
18	Bears the Burden of Proof:	
19	Exchange of Rebuttal Expert Witness	03/02/09
20	Reports on Issues on which the Disclosing	
21	Party Does Not Bear the Burden of Proof:	
22	Expert Discovery Cutoff:	04/02/09
23	Last Court Date to File Dispositive	05/04/09
24	Motions	
25	Last Court Date to File Oppositions to	05/18/09
26	Dispositive Motions	
27	Last Court Date to File Replies in Support	06/01/09
28		

of Dispositive Motions	
Last Date for Hearing of Dispositive Motions:	06/15/09
Final Pretrial Conference Date:	07/13/09
Trial Date:	08/03/09

Because the parties have agreed in principle to some settlement terms, Defendants believe that it is premature to set any schedule prior to a settlement conference.

18. Trial

The case will be tried by jury. Jelly Belly expects that the trial will last 7-10 days. Because the parties have agreed in principle to some settlement terms, Defendants believe that it is premature to estimate the length of trial.

19. Disclosure of Non-party Interested Entities or Persons

The Parties have filed the requisite "Certificate of Interested Entities or Persons." Aran's Certification lists Peter Cullen and Richard Cullen as interested persons, and Sweetstall's Certification lists Sally Rimmington and Peter Rimmington as interested persons. Jelly Belly's Certification lists Lisa Brasher, Becky Joffer, Christopher Rowland, Herman Rowland, Sr., and Herman Rowland, Jr. as interested persons.

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20. Other

The parties are not aware of any matters, other than those set forth herein, that may facilitate the just, speedy and inexpensive disposition of this matter.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 2/29/08

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Dated: February 29, 2008

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ARAN CANDY LTD. and SWEETSTALL.COM LTD.

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order are hereby adopted by the Court as the Case Management Order for the case and the Parties are ordered to comply with this Order.

Dated: _____

By: _____

THE HONORABLE MARILYN PATEL

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